

then, it is surely right now, when, by the express terms of the bill, no appropriation is made to meet any accrued interest on bonds. In deference always to the honorable Senators who differ from the chair, but with an earnest and conscientious desire to discharge my duty as presiding officer of this body, I have made this decision.

On motion of Senator Culberson, the Senate adjourned until 10 o'clock A. M. to-morrow.

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## TWENTIETH DAY.

SENATE CHAMBER,  
AUSTIN, February 3, 1875. }

Senate met pursuant to adjournment ; roll called ; quorum present. Prayer by the chaplain.

On motion of Senator Westfall, the reading of the journal of yesterday was dispensed with.

Senator Dillard moved that the speech of Senator Russell made on yesterday, on the passage of substitute for Senate bill No. 463, "An act to limit the amount to be issued in bonds to the International Railroad, etc.," and entered on the journal, be expunged therefrom.

Lost by the following vote :

YEAS—Senators Baker, Bradshaw, Dillard, Hobby, Shepard, Westfall and Wood—7.

NAYS—Senators Ball, Bradley, Burton, Camp, Culberson, Craven, Davenport, Ellis, Erath, Flanagan, Friend, Ireland, Morris, Moore, Parker, Randle, Stirman and Swift—18.

Senator Russell was excused from voting.

Senator Ireland gave notice that he would spread on the journals his reasons for voting in the negative on the above question.

Senator Westfall presented the petition of Geo. H. Gray, in regard "to his claims as legal clerk of the Supreme Court." Read and referred to Judiciary Committee.

Senator Flanagan presented a petition from citizens of Harmony Hill, Texas, "Asking that said town be incorporated, and that the sale of intoxicating liquors be prohibited within two miles of said town." Read and referred to Committee on Education.

Senator Camp presented a petition from citizens of Kilgore and vicinity, "Asking the Legislature to pass an act to incorporate the Alexander Institute, located at Kilgore, in Gregg county, Texas." Read and referred to Committee on Education.

On motion of Senator Parker, the message of his Excellency, the Governor, received on yesterday was taken up and read. The message was as follows:

EXECUTIVE OFFICE, STATE OF TEXAS, )  
AUSTIN, February 2, 1875. )

*Hon. R. B. Hubbard, President of the Senate:*

SIR: I return herewith, without my approval, Senate bill No. 345, "defining the offenses of non-feasance, mis-feasance and mal-feasance in office, and providing penalties therefor." Section two of this bill subjects justices of the peace to an onerous pecuniary fine, and removal from office for error of judgment in discharge of their official duties, whether in or out of court. If this bill should become a law and be strictly enforced, as all laws should be, it is believed that the office of justice of the peace would be vacated in every precinct in every county of the State in a very short time under its operation. Nor is it believed that any other officer under the government could maintain himself in office, if he should be brought within the requirements of a similar law. To require perfection of judgment in any officer, is to impose on the tenure of the office an impossible condition. Honest and good intentions under this bill will not save a justice of the peace from the very onerous penalty prescribed, when through "ignorance" he decides erroneously. No law is known ever to have existed in any country, which subjects a judicial officer to punishment when within the limits of his jurisdiction, he has acted or decided according to his best judgment. The great diversity of opinion on many legal questions, and the proverbial "uncertainty of the law," is such that no standard can be erected, by which to determine the correctness of any given opinion on any legal question. To require that justices of the peace shall, at their peril, decide properly and correctly all that comes before them, is simply to demand an impossibility of them.

It is against the principle of natural justice to treat as a criminal the man who, in his place has done honestly the best he could, and, while trying to do right, has from in-

firmity of judgment done wrong. No man has a right to hold an office whose ignorance disqualifies him from discharging its duties, and I would like to see this bill so amended, as to reach cases of that character, and provide for the removal from office of all whose ignorance endangers the public interest, or unfits them for the place, but do not believe that they should be treated as criminals and punished, unless their conduct has in it some element of crime. The other sections of this bill are more or less objectionable for the same reasons given as to section 2.

I respectfully ask a reconsideration of this bill.

Very respectfully,

RICHARD COKE.

A message was received from the House, announcing the passage of the following bills :

Senate bill No. 571, "An act amendatory of 'an act to incorporate the Galveston Agricultural, Horticultural and Industrial Association.'" Senate bill No. 544, "An act making an appropriation for the purpose of paying an oculist for treating the inmates of the institute for the blind." Senate concurrent resolution, "recommending to the Department of Education and to the teachers of the State a work on Botany, by Mrs. M. J. Young, of Texas." Also, that the House concurs in Senate amendments to House joint resolution No. 53, "authorizing the Speaker of the House of Representatives and the President of the Senate, to employ attorneys to defend a certain suit pending in the district court of Travis county, and making an appropriation to defray the expenses thereof."

Senator Ireland, Chairman Judiciary Committee, submitted the following reports :

*Hon. R. B. Hubbard, President of the Senate :*

Your Committee on Judiciary ask leave to report back to the Senate, House bill No. 715, "An act to amend 'an act to adopt and establish a Penal Code for the State of Texas,' approved August 18, 1856,'" and recommend its passage.

JOHN IRELAND, Chairman.

*Hon. R. B. Hubbard, President of the Senate :*

Your Committee on Judiciary ask leave to report back to the Senate, House bill No. 660, "An act to pay counsel for prosecuting cases in favor of the State of Texas," and recommend its passage.

JOHN IRELAND, Chairman.

*Hon. R. B. Hubbard, President of the Senate :*

Your Committee on Judiciary ask leave to report back

to the Senate, House bill No. 544, "an act to establish a Criminal Court in and for the cities of Paris, Clarksville and Bonham, and for the counties of Lamar, Red River and Fannin," and recommend its passage.

JOHN IRELAND, Chairman.

*Hon. R. B. Hubbard, President of the Senate :*

Your Committee on Judiciary ask leave to report back to the Senate, House bill No. 561, "An act to authorize the county court of Waller county to have certain records transcribed," and recommend that it do pass.

JOHN IRELAND, Chairman.

*Hon. R. B. Hubbard, President of the Senate :*

Your Committee on Judiciary ask leave to report back to your honorable body Senate bill No. 555, "An act to pay counsel for prosecuting cases in favor of the State," and recommend that no action for the present be taken on it.

JOHN IRELAND, Chairman.

*Hon. R. B. Hubbard, President of the Senate :*

Your Committee on Judiciary ask leave to report back to your honorable body Senate bill No. 577, "An act to provide for appeals from interlocutory judgments in the district courts, in certain cases," and recommend its passage.

JOHN IRELAND, Chairman.

*Hon. R. B. Hubbard, President of the Senate :*

Your Committee on Judiciary ask leave to report back to the Senate, Senate bill No. 578, "An act amending the several acts regulating proceedings in the district courts," and recommend that it do pass, with the following amendment :

Amend by striking out "30" and inserting "90" in line 16, page 1.

JOHN IRELAND, Chairman.

*Hon. R. B. Hubbard, President of the Senate :*

Your Committee on Judiciary ask leave to report back to the Senate, Senate bill No. 579, "An act to render valid the irregular registration of instruments of writing concerning lands," and recommend its passage.

JOHN IRELAND, Chairman.

*Hon. R. B. Hubbard, President of the Senate :*

Your Committee on Judiciary, ask leave to report back to the Senate, Senate bill No. 580, "An act to amend, and

supplemental to an act entitled 'an act further regulating proceedings in the several courts of the State of Texas,' approved May 19, 1871, and recommend that it do not pass.

JOHN IRELAND, Chairman.

*Hon. R. B. Hubbard, President of the Senate:*

Your Committee on Judiciary ask leave to report back to the Senate, Senate bill No. 582, "An act making an appropriation to pay J. W. Ferris for his services as special judge in the case wherein the International Railroad Company was plaintiff, and A. Bledsoe, defendant," and recommend that it do pass with the following amendment:

Amend by striking out "one thousand," page one, line twenty-one, and insert in lieu thereof the words "seven hundred and fifty."

JOHN IRELAND, Chairman.

*Hon. R. B. Hubbard, President of the Senate:*

Your Committee on Judiciary ask leave to report back to the Senate, Senate bill No. 584, "An act to prohibit the Commissioner of the General Land Office from giving copies in certain cases," and recommend its passage.

JOHN IRELAND, Chairman.

*Hon. R. B. Hubbard, President of the Senate:*

Your Committee on Judiciary ask leave to report back to the Senate, Senate bill No. 585, "An act to define who may be proper defendants in suits for land in certain cases," and recommend its passage.

JOHN IRELAND, Chairman.

*Hon. R. B. Hubbard, President of the Senate:*

Your Committee on Judiciary ask leave to report back the Senate, the resolution, "Instructing the Secretary of the Senate to make out and deliver to the officers of the Senate certificates of pay for mileage," with the following amendment, and recommend that it do not pass.

Amend by inserting "and clerks," after the word "officers," in line six.

JOHN IRELAND, Chairman.

Senator Moore, Chairman Committee on Federal Relations, submitted the following report:

*Hon. R. B. Hubbard, President of the Senate:*

Your Committee on Federal Relations, to whom was referred House joint resolution No. 57, "Instructing our

Congressional delegation to urge upon Congress the early and favorable consideration of the claims upon the people's gratitude of those who rendered service in the army and navy of the United States in the late war with Mexico," have carefully considered same. and instruct me to report same back and recommend its passage.

MOORE, Chairman.

Senator Friend, Chairman Committee on Roads, Bridges and Ferries, submitted the following report :

*Hon. R. B. Hubbard, President of the Senate :*

Your Committee on Roads, Bridges and Ferries, to whom was referred Senate bill No. 492, "An act to regulate public roads in the State of Texas," instruct me to report that they have had the same under consideration for a second time, and have found no reason why they should not adhere to their original report, and again recommend that the bill do not pass. W. R. FRIEND, Chairman.

Senator Friend, for Committee on Engrossed Bills, submitted the following report :

*Hon. R. B. Hubbard, President of the Senate :*

Your Committee on Engrossed Bills have carefully examined and compared Senate bill No. 581, "An act for the relief of R. B. Shaw," and find the same correctly engrossed. Also Senate bill No. 596, "An act to make the taxes levied by incorporated cities in this State a lien upon property, and to provide for the enforcement thereof."

W. R. FRIEND, for Committee.

Senator Stirman, Chairman Committee on State Affairs, submitted the following report :

*Hon. R. B. Hubbard, President of the Senate :*

Your Committee on State Affairs, to whom was referred the petitions from Collin and McLennan counties, "To prohibit the sale and manufacture of intoxicating liquors within three miles of Blue Ridge, in Collin county, and Comanche Springs, in McLennan county," have considered the same; and instruct me to report said petitions back to your honorable body, and recommend the passage of the accompanying bill. W. B. STIRMAN, Chairman.

The title of the bill referred to is "An act to prohibit the sale, manufacture or disposal, in any way, of intoxicating

liquors within three miles of Blue Ridge, in Collin county, and Comanche Springs, in McLennan county."

*Hon. R. B. Hubbard, President of the Senate:*

Your Committee on State Affairs, to whom was referred the petition of Francis D. Fletcher, of Lampasas county, "Asking to be relieved from the payment of any taxes, as the keeper of a family grocery, in consequence of being blind," etc., has been carefully considered by the committee, and they instruct me to report it back to your honorable body with the accompanying bill, and recommend its passage.

W. B. STIRMAN, Chairman.

The title of the bill referred to is "An act for the relief of Francis D. Fletcher of Lampasas county."

Senator Wood introduced a bill entitled "An act to regulate the fees of District Attorneys in felony cases." Read first time and referred to Judiciary Committee.

A message was received from the House announcing the passage of the following House bills, viz:

No. 729, "An act to prohibit the sale of intoxicating liquors within five miles of certain places therein named."

No. 604, "An act amendatory and supplemental to an act amendatory of and supplemental to an act entitled 'an act to regulate the assessment and collection of taxes,' " approved May 31, 1873; approved April 30, 1874.

No. 626, "An act to provide for the collection and disbursement of moneys belonging to the Lunatic Asylum."

The hour for the consideration of the special order having arrived, to-wit: Senate bill No. 471, "An act to amend 'an act to encourage stock-raising,' " approved March 23, 1874, it was taken up.

Senator Ellis offered the following amendment: Section fourteen of the above recited act is hereby amended so as to read:

Section 14. Any person or persons, who shall drive any cattle to market beyond the limits of this State, shall, before removing such cattle from the county where the same have been gathered, place upon each and every animal so to be driven, a large and plain road brand, composed of of any device he may choose, which brand shall be branded on the left side of the back behind the shoulder; said road brand shall be placed upon cattle at no other time than after this inspection, and when on the

eve of starting on their way out of the county ; and every person or persons using, or causing to be used, any road brand, shall place the same on record, as in case of other brands in the county from which said animals are driven, and before their removal from such county ; and all road-branded cattle shall be driven out of the county, and shall not be turned loose in pastures or elsewhere in the county ; and should any person violate the provisions of this section, he shall be punished by confinement in the penitentiary, not less than one, nor more than three years. Adopted.

Senator Craven offered the following amendment :

“Strike out that portion of the amendment giving inspectors power to arrest without warrant.”

Senator Wood offered the following amendment, as a substitute for the one offered by Senator Craven :

“Inspectors shall have authority to arrest without a warrant ; *provided*, there shall be presented to such inspector, by view, or otherwise, such facts as should render it reasonably probable that the party arrested is guilty of a violation of the law ; *provided*, that a warrant in all cases shall be obtained, unless it shall be reasonably certain that the guilty party, in consequence of the delay to procure the warrant, will escape.”

The amendment offered by Senator Wood was accepted by Senator Craven.

Senator Culberson offered the following as an amendment to the amendment offered by Senator Wood.

After the word “facts,” insert the words, “when not in view, sworn to by some credible witness.”

The amendment was accepted by Senator Wood.

The amendment was then lost.

Senator Erath offered the following amendment, as an additional section : “Any citizen selling cattle, in value less than twenty dollars, or hides in value less than ten dollars, shall not be compelled to have the bill of sale authenticated ; but said bill of sale shall be preserved by the purchasers as evidence to the inspector.”

Senator Ireland offered the following as a substitute for the amendment offered by Senator Erath : “*provided*, any person killing animals belonging to themselves, and for their own use, and not for market, shall be compelled to have the hides inspected before sale.”

The substitute offered by Senator Ireland was adopted.



Senator Ireland offered the following amendment, as an addition to caption of the original bill: "and to prescribe penalties for the violation of this act." Adopted.

The bill as amended was then ordered engrossed.

On motion of Senator Erath, the rules were suspended, bill read third time and passed.

On motion of Senator Bradley, the rules were suspended and House bill No. 585, "An act to amend an act entitled 'an act to amend section one, of an act entitled an act to amend the thirty-fourth and thirty-sixth sections of an act prescribing the times for holding the district courts in the several Judicial Districts in the State,'" approved August 10, 1870; approved February 6, 1871; approved May 31st, 1873, was taken up, read second time and passed to third reading.

On motion of Senator Bradley, the rules were further suspended, bill read third time and passed.

On motion of Senator Ellis, the rules were suspended and Senate bill No. 524, "An act to amend section eight, of an act entitled 'an act to incorporate the Gulf, Colorado and Santa Fe Railroad Company, and to grant land in aid of the construction of the same,'" approved May 28, 1873, was taken up, pending the amendment by the House.

The House amendments were concurred in.

On motion of Senator Culberson, the rules were suspended, and House bill No. 544, "An act to establish a Criminal Court in and for the cities of Paris, Clarksville and Bonham, and for the counties of Lamar, Red River and Fannin," was taken up, read second time and passed to third reading.

On motion of Senator Moore, the rules were further suspended, bill read third time and passed.

Senator Shepard, by leave, introduced the following bills:

"An act to amend section 357 of an act entitled 'an act prescribing the mode of proceeding in district courts in matters of probate,'" approved August 15, 1870.

"An act to amend 'an act to regulate the license and practice of attorneys and counselors at law,'" approved May 12, 1846. Both read first time and referred to Judiciary Committee.

(Senator Ellis in the chair.)

On motion of Senator Erath, the rules were suspended.

and House bill No. 729, "An act to prohibit the sale or giving away of intoxicating liquors within five miles of certain places therein named," was taken up and read first time.

On motion of Senator Erath, the rules were suspended, and bill read second time.

Senator Morris offered the following amendment: "Amend by inserting 'Lone Oak, Hunt county.'" Adopted.

Senator Westfall offered to amend by inserting "Strickland, in Burnet county." Adopted.

Senator Flanagan offered to amend by inserting "Harmony Hill, in Rusk county." Adopted.

Senator Morris offered to amend by striking out the words "Saltillo, in Hopkins county." Adopted.

Senator Wood offered to amend by inserting "Possum Walk, in Leon county." Adopted.

The bill, as amended, then passed to third reading.

Senator Bradley moved to adjourn until 10 o'clock A. M. to-morrow. Lost.

On motion of Senator Erath, the rules were suspended, bill read third time and passed.

On motion of Senator Dillard, the rules were suspended, and Senate bill No. 582, "An act to pay J. W. Ferris, special judge," was taken up and read second time, pending an amendment by the committee.

The amendment offered by the committee was adopted.

The bill, as amended, was then ordered engrossed.

On motion of Senator Wood, the rules were further suspended, bill read third time and passed by the following vote:

YEAS—Senators Ball, Baker, Bradshaw, Bradley, Camp, Culberson, Dillard, Davenport, Dwyer, Ellis, Erath, Flanagan, Hobby, Ireland, Morris, Moore, Parker, Randle, Russell, Shepard, Stirman, Swift, Westfall and Wood—24.

NAYS—Senators Burton and Friend—2.

On motion of Senator Wood, the rules were suspended, and House bill No. 715, "An act to amend 'an act to adopt and establish a Penal Code for the State of Texas,' approved August 28, 1856, was taken up, read second time, and passed to third reading.

Rules suspended, bill read third time and passed.

On motion of Senator Bradshaw, the Senate adjourned until 10 o'clock A. M., to-morrow.